

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

REGINALD ALAN DAVIS,

Plaintiff,

v.

Case No. 2:11-cv-03076-STA-cgc

CITY OF MEMPHIS FIRE DEPARTMENT, et al,

Defendants.

**ORDER DENYING PLAINTIFF'S
MOTION FOR SANCTIONS AND CONTEMPT**

On August 22, 2012, Plaintiff Reginald Alan Davis filed a Motion for Sanctions and Contempt. (D.E. # 72) The motion was referred by District Judge S. Thomas Anderson to the undersigned magistrate judge for determination. (D.E. # 74) For the following reasons, the Motion is DENIED.

Plaintiff filed his Third Amended Complaint on June 13, 2012 (D.E. # 47). On July 24, 2012, Plaintiff filed a Motion for Default Judgment against defendants Alvin Benson and Daryle Payton alleging a failure to answer the Third Amended Complaint (D.E. # 57)¹. Defendants Benson and Payton responded to the motion (D.E. # 58) and filed a Motion to Extend the deadline to respond to the Third Amended Complaint (D.E. # 59) on July 25, 2012. The District Court granted Benson and Payton until August 3, 2012 “to respond to Plaintiff's Third Amended Complaint.” (D.E. # 65). On August 3, 2012, Benson and Payton filed their Second Motion to Dismiss for Failure to State a Claim pursuant to Fed. R. Civ. P. 12(b)(6). (D.E. # 70)

¹ This Motion was denied on August 14, 2012 (D.E. # 71).

Plaintiff filed the instant motion alleging that Benson and Payton “have chosen to willfully disobey and violate the Court’s July 27, 2012 Order” by failing to file an answer to Plaintiff’s Third Amended Complaint. However, the July 27th Order did not require that an Answer be filed by August 3rd but that the Individual Defendants *respond* to Plaintiff’s Third Amended Complaint by the due date. (emphasis added) Fed. R. Civ. P. 12(b) provides that a motion asserting a defense of failure to state a claim upon which relief may be granted must be made before pleading if a responsive pleading is allowed. The defendants are only required to serve a responsive pleading if the Court denies their motion to dismiss or postpones its disposition until trial. *See*, Fed. R. Civ. P. 12(a)(4). Therefore, Benson and Payton have properly responded to Plaintiff’s Third Amended Complaint and have not violated the Court’s July 27, 2012 Order.

The Motion is **DENIED**.

IT IS SO ORDERED this 27th day of August, 2012.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE